

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

MARK RILEY,

Plaintiff,

v.

**Civil Action No. 5:08CV72
(Judge Stamp)**

**ADMINISTRATOR MARTIN,
SARA TRADER, SGT. KEENER,
WARE, C/O BENCH AND
MEDICAL STAFF,**

Defendants.

OPINION/REPORT AND RECOMMENDATION

On March 12, 2008, the plaintiff initiated this case by filing a civil rights complaint pursuant to 42 U.S.C. § 1983. On April 28, 2008, the plaintiff was granted permission to proceed as a pauper and was directed to pay an initial partial filing fee of \$4.00 within thirty days. The plaintiff was granted a ten day extension on July 21, 2008.

On October 29, 2008, the undersigned conducted a review of the file and determined that the plaintiff had failed to timely pay the partial filing fee, had not requested an additional extension of time to do so, nor otherwise explained the reasons for his non-compliance with the Court's Order. Thus, the Court issued an Order to Show Cause why his case should not be dismissed. The plaintiff has failed to respond to the Court's show cause Order. Accordingly, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, it is hereby recommended that this case be **DISMISSED without prejudice** for the failure to prosecute.

Within ten (10) days after being served with a copy of this recommendation, any party may file with the Clerk of Court written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections should also

be submitted to the Honorable Frederick P. Stamp, Jr., United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send a copy of this Opinion/Report and Recommendation to the pro se petitioner by certified mail, return receipt requested, to his last known address as shown on the docket.

Dated: December 24, 2008.

John S. Kaull

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE